STATE OF MICHIGAN

COURT OF APPEALS

SAFEWAY TRANSPORTATION, INC., PATRICIA WHITLOW, BETTINA MARTIN, DORIS PINKSTON, FRANK FERRILL, THERESA PARKER, and YVONNE RUCKER,

Plaintiffs-Cross Appellees/Cross Appellants,

v

ESSIE HOOD and CLAYTON HOOD, a/k/a CLAIR WILLIAMS,

Defendants,

and

GEORGE E. BRADLEY, d/b/a OT TRANSPORTATION, GEORGE BRADLEY, INC., and OT TRANSPORTATION, INC.,

Defendants-Cross-Appellees.

UNPUBLISHED
July 1, 2003

No. 233711
Wayne Circuit Court
LC No. 98-838153-CZ

SAFEWAY TRANSPORTATION, INC., PATRICIA WHITLOW, BETTINA MARTIN, DORIS PINKSTON, FRANK FERRILL, THERESA PARKER, and YVONNE RUCKER,

Plaintiffs-Appellants,

v

GEORGE E. BRADLEY, d/b/a OT TRANSPORTATION, and OT TRANSPORTATION, INC.,

Defendants-Appellees,

and

No. 236002
Wayne Circuit Court
LC No. 98-838153-CZ

CLAYTON HOOD, a/k/a CLAIR WILLIAMS,
ESSIE HOOD and GEORGE BRADLEY, INC.,

Defendants.

Before: Griffin, P.J., and Murphy and Jansen, JJ.

PER CURIAM.

In these consolidated appeals brought as of right, the only remaining challenge is to the trial court's award of case evaluation[1] sanctions to George E. Bradley, OT Transportation, and George Bradley, Inc. [hereinafter "defendants"].[2] We affirm.

The principal dispute in this case concerned an alleged non-compete provision of a shareholder subscription agreement for a closely held corporation. Plaintiff Safeway Transportation, Inc. provides transportation services for Detroit schoolchildren. Clayton Hood was one of the company's incorporators and served as corporate director and president until he was removed in 1997 after suffering a stroke. After being discharged from Safeway, Clayton Hood helped form a competing bus company, defendant OT Transportation, Inc.,[3] which solicited the Detroit Public Schools for routes. Safeway alleged that it had a non-compete policy prohibiting its shareholders from being involved in the student transportation business, thus, prompting this lawsuit. The jury rendered "no cause" verdicts on each of plaintiffs' claims.

Plaintiffs' only remaining issue on appeal is that defendants are not entitled to an award of case evaluation sanctions when the case evaluation panel failed to issue an award as to those defendants. We disagree.

The case was evaluated under MCR 2.403. A party who rejects an evaluation is subject to sanctions if he fails to improve his position at trial. *Elia v Hazen*, 242 Mich App 374, 378;

---

[1] Formerly known as "mediation."

[2] In these consolidated appeals, plaintiffs challenged a judgment of no cause of action which was issued after an eight-day jury trial. Additionally, plaintiffs and defendants both challenged the trial court's determination of entitlement to, and amount awarded for, case evaluation sanctions. On June 13, 2003, an order was entered pursuant to a stipulation of the parties under MCR 7.218(B), dismissing Clayton Hood and Essie Hood from the appeals. In addition, the stipulation filed also stipulated that the only issue remaining unresolved was the case evaluation sanctions award to defendants George Bradley, OT Transportation, and George Bradley, Inc. Therefore, plaintiffs have also stipulated to dismissing the appeal with regard to the jury verdict being against the great weight of the evidence, even though some of these claims (the unjust enrichment and tortious interference with a contract or business relationship or expectancy) were against defendants other than the Hoods.

[3] Defendant George Bradley was running the company that became OT Transportation upon his association with Clayton Hood. Bradley and his affiliated companies were sued, in part, for benefiting from allegedly confidential information and business practices that Hood acquired during his association with Safeway.

619 NW2d 1 (2000). The evaluation panel issued a unanimous evaluation of "$25,000.00 IN FAVOR OF PTY 01 VS PTY 08." According to the caption on the evaluation, "PTY 01" was Safeway and "PTY 08" was Clayton Hood. Directly beneath the evaluation figure was a comment: "COMMENTS: PTYS 1 THRU 7 VS PTYS 8, 9, 10 & 11." The caption showed parties 2 through 7 as the individual shareholder plaintiffs, and parties 9 through 11 as George Bradley, "OT Transportation DBA," and Essie Hood, respectively. The plaintiffs, parties 1 through 7, expressly rejected the evaluation. No defendants responded. Therefore, any defendants who were *required* to respond were deemed to have rejected the evaluation under MCR 2.403(L)(1).

We believe it is clear that the evaluation affected all eleven parties. If the panel had intended to impose an award affecting only two parties, it would not have needed to add the explanatory comment, inasmuch as the caption itself already made clear which parties were aligned as plaintiffs and which were defendants. Indeed, plaintiffs confirmed this understanding when all seven joined in the written rejection.

The proper inquiry for an award of case evaluation sanctions is whether the conditions of MCR 2.403(O) have been satisfied, which, in this case, principally means that the party must have participated in the case evaluation process, and must have improved his or her position if he or she rejected the evaluation. Any party named in a lawsuit is exposed to liability, including liability for costs. If a party participates in case evaluation and rejects the award, imposition of sanctions is generally mandatory. *Great Lakes Gas Transmission Ltd Partnership v Markel*, 226 Mich App 127, 130; 573 NW2d 61 (1997). There are only limited circumstances where a court can decline to award sanctions, none of which are applicable here. E.g., certain cases involving equitable relief, MCR 2.403(O)(5), certain dramshop actions, MCR 2.403(O)(9), and certain cases where the "verdict" is a judgment entered on a motion after a party rejected the evaluation, MCR 2.403(O)(11). *Great Lakes Gas Transmission Ltd Partnership*, *supra*.

For the above reasons, we reject plaintiffs' argument that defendants were not included in case evaluation and, accordingly, were not entitled to sanctions. Plaintiff Safeway rejected the evaluation and failed to improve its position at trial. *Elia*, *supra* at 378.[4] Defendants were a rejecting party within the scope of MCR 2.403. The court did not err by awarding sanctions to defendants.

Affirmed.

/s/ Richard Allen Griffin
/s/ William B. Murphy
/s/ Kathleen Jansen

[4] We note that defendants have not appealed the trial court's ruling that the plaintiff Safeway is solely responsible for the sanctions in defendants' favor.